

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SUSAN A. MASON,

Plaintiff,

v.

AMERICAN FAMILY CONNECT  
PROPERTY AND CASUALTY  
INSURANCE COMPANY,

Defendant.

CASE NO. 2:24-cv-00643-BAT

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND  
COMPLAINT**

Plaintiff Susan A. Mason seeks leave to amend her original Complaint to add claims for violation of Washington's Insurance Fair Conduct Act (IFCA). Dkt. 19; Dkt. 20, Declaration of T. Jeffrey Keane; Ex. 1 (proposed First Amended Complaint). Defendant American Family Connect Property and Casualty Insurance Company opposes the motion on the grounds that Plaintiff's IFCA Notice was untimely and is moot. Dkt. 21; Dkt. 22 (Declaration of Jessica A. McGarvie). Plaintiff filed a reply. Dkt. 23; Dkt. 24 (Declaration of Donna M. Pucel). Having considered the submissions and remaining record, the Court GRANTS the motion.

BACKGROUND

On April 8, 2024, Plaintiff filed a Complaint for Breach of Contract and Washington Consumer Protection Act (CPA) claims against Defendant, her automobile insurance company, in King County Superior Court. Dkt. 1-2. Plaintiff's claims against Defendant stem from injuries and damages she suffered in an automobile accident on July 21, 2021. Dkt. 1-2, ¶¶ 3.1-3.2.

Defendant was served with the Complaint on April 17, 2024. Dkt. 22, McGarvie Decl., Ex. A.

1 Plaintiff alleges her injuries and damages substantially exceed the combined limits of the  
2 tortfeasor's policy and Plaintiff's UIM policy; Defendant wrongfully denied her policy limit  
3 demand despite documentation of harm and inadequate compensation received; and Defendant  
4 wrongfully failed to investigate, adjust, and pay her UIM claim. Dkt. 1-2, ¶¶ 3.0 - 4.2.1.

5 On May 8, 2024, Defendant removed the state court action to this Court. Dkt. 1. On May  
6 22, 2024, Plaintiff sent an IFCA notice to the Washington State Insurance Commissioner and to  
7 Defendant. Dkt. 24, Decl. of Pucel, Ex. F. The IFCA notice was received by the Insurance  
8 Commissioner on May 30, 2024, and by Defendant on June 3, 2024. *Id.*, Ex. G. On June 6, 2024,  
9 Plaintiff filed a Motion for Remand (Dkt. 9), which was denied on July 5, 2024. Dkt. 14. On  
10 August 22, 2024, Plaintiff filed the instant Motion to Amend her Complaint to add IFCA claims  
11 against Defendant. Dkt. 19.

#### 12 STANDARD OF REVIEW

13 "The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).  
14 This grant of discretion to permit leave to amend is "to be applied with extreme liberality" as  
15 there is a strong presumption in favor of granting leave to amend a complaint. *Eminence Capital,*  
16 *LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051–52 (9th Cir. 2003). This Court must consider five  
17 factors in granting leave to amend a complaint: (1) bad faith, (2) undue delay, (3) prejudice to the  
18 opposing party, (4) futility of amendment, and (5) whether the complaint has previously been  
19 amended. *See, e.g., United States v. Corinthian Colleges*, 655 F.3d 984, 995 (9th Cir. 2011).

20 Here, there is no bad faith, undue delay, prejudice to Defendant, or previous amendments.  
21 Defendant does not oppose Plaintiff's proposed amendment on substantive grounds but solely on  
22 the ground that Plaintiff's IFCA notice was untimely and is therefore, moot. Thus, the only factor  
23 at issue is whether Plaintiff's proposed amendment is futile. A court may deny leave to amend

1 “where the amendment would be futile ... or where the amended complaint would be subject to  
 2 dismissal.” *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991). “[A] proposed amendment  
 3 is futile only if no set of facts can be proved under the amendment to the pleadings that would  
 4 constitute a valid and sufficient claim or defense.” *Miller v. Rykoff-Sexton, Inc.*, 845 F.2d 209,  
 5 214 (9th Cir. 1988), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct.  
 6 1937, 173 L.Ed.2d 868 (2009).

### 7 DISCUSSION

8 Washington’s IFCA provides that “[a]ny first party claimant to a policy of insurance who  
 9 is unreasonably denied a claim for coverage or payment of benefits by an insurer may bring an  
 10 action in the superior court of this state to recover the actual damages sustained, together with  
 11 the costs of the action, including reasonable attorneys' fees and litigation costs.” RCW  
 12 48.30.015(1). However, *twenty days prior to filing an IFCA action against an insurer*, “a first  
 13 party claimant must provide written notice of the basis for the cause of action to the insurer and  
 14 the office of the insurance commissioner.” *Id.* at (8)(a) (emphasis added). Courts have construed  
 15 IFCA's pre-suit notice provision as mandatory and requiring strict compliance. *See MKB*  
 16 *Constructors v. American Zurich Ins. Co.*, 49 F.Supp.3d 814, 840 (W.D. Wash. 2014); *Medina*  
 17 *Pub. Util. Dist. No. 1 of Benton Cty.*, 147 Wn.2d 303, 316 (2002) (statutory notice provisions  
 18 generally require strict compliance except as to the content).

19 On May 22, 2024, three months prior to seeking leave to amend her Complaint to allege  
 20 IFCA claims against Defendant, Plaintiff sent an IFCA notice to the Washington State Insurance  
 21 Commissioner and to Defendant. Dkt. 24, Decl. of Pucel, Ex. F. Defendant does not contend it  
 22 did not receive Plaintiff’s IFCA Notice. *See, e.g., MKB Constructors*, 49 F.Supp.3d at 839-840  
 23 (granting ruling on summary judgment that plaintiff fulfilled the RCW 48.30.015(8)(a))

1 procedural prerequisite for bringing an IFCA claim where plaintiff sent its IFCA Notice more  
2 than five months prior to filing its *amended complaint*) (emphasis added).

3 Accordingly, it is **ORDERED**:

- 4 1. Plaintiff's Motion to Amend (Dkt. 19) is **GRANTED**;
- 5 2. Plaintiff may file and serve her First Amended Complaint (Dkt. 20, Ex. 1).
- 6 3. The Clerk shall send a copy of this Order to all parties.

7 DATED this 16th day of September, 2024.

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BRIAN A. TSUCHIDA  
United States Magistrate Judge